



**THE ATTORNEY GENERAL  
OF TEXAS**

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**AUSTIN, TEXAS 78711**

August 13, 1971

Honorable David P. Bell  
Executive Director  
Texas Industrial Accident Board  
State Insurance Building  
Austin, Texas 78701

Opinion No. M-929

Re: The liability of a county  
to its employees for in-  
juries under the provisions  
of Article 8309c, Vernon's  
Civil Statutes, as amended  
by the 62nd Legislature,  
R.S., 1971, in S.B. No. 364.

Dear Mr. Bell:

By reason of the enactment of Senate Bill No. 364 by the 62nd Legislature, Regular Session, 1971, (amending Art. 8309c, Vernon's Civil Statutes), you have requested our opinion concerning the following question:

"If counties do not carry workmen's compensation, either through a private insurance company or by being self-insured, do they lose their common law defenses of contributory negligence, fellow servant doctrine and assumed risk?"

Senate Bill No. 364 provides, in part, as follows:

"Section 3. The county is hereby authorized to either be self-insuring or that it purchase workmen's compensation insurance for its employees from any company authorized to do business in Texas, and is charged with the administration of this Act. It is expressly understood that the provision authorizing counties to provide such compensation or insurance is permissive and not mandatory; provided, however, that

in any county of this State, the Commissioners Court on its own motion may call an election for the purpose of determining whether the county shall adopt the provisions of this Act. If a majority of the qualified voters at such an election votes for the adoption of the provisions of this Act, the provisions of this Act shall thereafter be applicable to such county, and in such event it shall be mandatory that such county be either self-insuring or that it purchase workmen's compensation insurance for its employees from any company authorized to do business in Texas, and is charged with the administration of this Act; provided, however, that if such county fails to provide either self-insurance or insurance under a policy of insurance, the county shall be subject to Sections 1 and 4 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended or as they may hereafter be amended."

Section 1 of Article 8306 referred to in the above quotation provides that the common law defenses referred to in your question are not defenses in a suit by an employee against an employer who comes within the terms of the Workmen's Compensation Act. Counties are not now within the coverage of the Workmen's Compensation laws unless they have heretofore voluntarily adopted the enabling statutes enacted by the Legislature concerning workmen's compensation benefits for counties.

Since the authority under Senate Bill No. 364 to provide county employees with workmen's compensation insurance is permissive, a county will not lose its common law defenses if the amended law is not adopted by the county. However, under the express provisions of the amended statute, if the qualified voters adopt the provisions of the Act pursuant to an election called by the Commissioners Court, it becomes mandatory for the county to be either self-insuring or to purchase workmen's compensation insurance; and after such election, if the county fails to provide either self insurance or insurance from an insurance company, such county will be subject to the provisions of Sections 1 and 4 of Article 8306, Revised Civil Statutes of Texas, and therefore will lose its common law defenses of contributory negligence, fellow servant doctrine and assumed risk.

S U M M A R Y

If at an election a county adopts the provisions of S.B. No. 364, 62nd Leg., R.S. 1971, it is mandatory that the county be either self-insuring or that it purchase workmen's compensation insurance, and if it fails to do either, it will lose its common law defenses of contributory negligence, fellow servant doctrine and assumed risk.

Very truly yours,

  
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Attorney General of Texas

Prepared by Jack Sparks  
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APPROVED:  
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